

RECORDING REQUESTED BY:

City of Los Altos

WHEN RECORDED, MAIL TO:

City of Los Altos

City Clerk

1 North San Antonio Road, Los Altos, CA 94022

RECORD WITHOUT FEE UNDER

§§27383 & 27388.1 GOVERNMENT CODE

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Improvement Agreement

Tract 10576

APN:170-39-043

LYELL, LLC

IMPROVEMENT AGREEMENT

This Improvement Agreement (this "Agreement") is made and entered into by and between the CITY OF Los Altos, a municipal corporation (hereinafter "City"), and LYELL, LLC, (hereinafter "Developer"). City and Developer may be collectively referred to herein as the "parties."

RECITALS

- A. In accordance with the Subdivision Map Act (California Government Code Sections 66410, *et seq.*), and the Subdivision Ordinance (Los Altos Municipal Code, Title 13), and the Street Ordinance (Los Altos Municipal Code, Title 9), the Developer has submitted to the City a Final Map (hereinafter "Final Map") for the project known as Altos One (hereinafter "Project").
- B. The Project is geographically located within the boundaries of the Tentative Subdivision Map known as 140 Lyell Street (hereinafter "Tentative Map"). Lot located at 140 Lyell St (APN: 170-39-043). The Tentative Map is on file with the City Engineer and is incorporated herein by reference. The area within the boundaries of the Tentative Map is described in **Exhibit A** hereto (the "Property").
- C. The City's approval of the Tentative Map was subject to specified conditions of approval (hereinafter "Conditions"). The Conditions are attached hereto as **Exhibit B** and incorporated herein by reference.
- D. As required by the Conditions, the Tentative and Final Maps, and other Project entitlements, Developer shall construct public improvements in connection with the Project along Lyell Street and Gabilan Street, including but not limited to the following: installation of approximately 230 linear feet concrete sidewalk, installation of approximately 230 lineal feet of concrete vertical curb and gutter, installation of four new driveway approach, installation of three accessible ramps, repair of any damaged right-of-way infrastructures, removal and replacement of storm drain inlet, resurfacing (grind and overlay) half of the street along Lyell Street and Gabilan Ave. if determined to be damaged, and installation of all appurtenances associated with above listed improvements (collectively, the "Work").

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. **SCOPE OF WORK.** The Developer shall perform, or cause to be performed, the Work to the Satisfaction of the City Engineer and in accordance with plans and specifications to be approved by the City Engineer (the "Plans and Specifications"). The Work shall be performed, and all materials and labor shall be provided, at the Developer's sole cost and expense. No change shall be made to the Scope of Work unless authorized in writing by the City Engineer.
- 2. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Developer shall, at the Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the Work. The Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement. *WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DEVELOPER HEREBY AGREES TO BE BOUND BY THE LABOR CODE PROVISIONS ATTACHED HERETO AT EXHIBIT C.*
- 3. **DEVELOPER'S AUTHORIZED REPRESENTATIVE.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent (hereinafter "Authorized Representative") on site with authority to act on behalf of the Developer. The Developer shall, at

all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. The Developer shall, at all times, keep the City Engineer informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work.

4. **IMPROVEMENT SECURITY.** The Developer shall furnish faithful performance and labor and material security concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any Work. The Developer shall furnish warranty security prior to the City's acceptance of the Work. The form of the security shall be as authorized by the Subdivision Map Act (including Government Code Sections 66499, *et seq.*) and Section 13.20.210 the Los Altos Municipal Code, and as set forth below:
 - 4(a). **Faithful Performance** security in the amount of \$129,100.00 (which amount is equal to the estimated cost to construct the Work in accordance with the Plans and Specifications) to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete) pursuant to Government Code Sections 66499.1, 66499.4, and 66499.9.
 - 4(b). **Labor and Material** security in the amount of \$64,550.00 (which amount is equal to fifty (50) percent of the estimated cost to construct the Work in accordance with the Plans and Specifications) to secure payment by the Developer to laborers and materialmen pursuant to Government Code Sections 66499.2, 66499.3, and 66499.4.
 - 4(c). **Warranty** security in the amount of \$12,910.00 (which amount is equal to ten (10) percent of the estimated cost to construct the Work in accordance with the Plans and Specifications) to secure faithful performance of this Agreement (from the date on which the City accepts the Work as complete until one year thereafter) pursuant to Government Code Sections 66499.1, 66499.4, and 66499.9.
5. **BUSINESS TAX.** The Developer shall apply for and pay the business license tax for a business license, in accordance with Los Altos Municipal Code Chapter 4.04.
6. **INSURANCE.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer (including its agents, representatives, contractors, subcontractors, and employees) in connection with the performance of services under this Agreement. **Exhibit D** of this Agreement identifies the minimum insurance levels with which Developer shall comply; however, the minimum insurance levels shall not relieve Developer of any other performance responsibilities under this Agreement (including the indemnity requirements), and Developer may carry, at its own expense, any additional insurance it deems necessary or prudent. The general liability and automobile policies required under **Exhibit D** shall contain, or be endorsed to contain, provision for the City, its officers, officials, employees, agents and volunteers, to be covered as additional insureds as respects alleged liability arising out of activities performed by or on behalf of the Developer under this Agreement. Concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any services, the Developer shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Developer shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.
7. **REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Developer shall immediately notify the City Risk Manager's office by telephone at 650-947-2609, and Developer shall promptly submit to the City's Risk Manager and the City Manager or designee, a written report (in a form acceptable to the City) with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property), (b) name and address of witnesses, and (c) name and address of any potential insurance companies.

8. **INDEMNIFICATION.** Developer shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to the City) the City and its elected officials, officers, agents and employees from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorneys' fees) resulting or arising from performance, or failure to perform, under this Agreement (with the exception of the gross negligence or willful misconduct of the City).

9. **TIME OF PERFORMANCE.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

9(a). **Commencement of Work.** No later than fifteen (15) days prior to the commencement of Work, the Developer shall provide written notice to the City Engineer of the date on which the Developer shall commence Work. The Developer shall not commence Work until after the notice required by this section is properly provided, and the Developer shall not commence Work prior to the date specified in the written notice.

9(b). **Schedule of Work.** Concurrently with the written notice of commencement of Work, the Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect the Developer's prosecution of the Work.

9(c). **Completion of Work.** The Developer shall complete all Work by no later than three hundred sixty-five (365) days after the City's execution of this Agreement.

10. **INSPECTION BY THE CITY.** In order to permit the City to inspect the Work, the Developer shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. Developer shall reimburse the City for the costs of the City Engineer's inspections of the Work, as required by Los Altos Municipal Code Section 13.20.190.

11. **DEFAULT.** If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten (10) days of the notice, or, (b) if more than ten (10) days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten (10) days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

11(a). The Developer shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:

11(a)(1). The Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

11(a)(2). The Developer abandons the Project site.

11(a)(3). The Developer fails to perform one or more requirements of this Agreement.

11(a)(4). The Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

11(a)(5). The Developer violates any legal requirement related to the Work.

11(b). Without prejudice to any other remedy available to the City at law, in equity, or under this Agreement, in the event that the Developer fails to cure the default, the City may, in the discretion of the City Engineer, take any or all of the following actions:

11(b)(1). Cure the default and charge the Developer for the costs therefor, including administrative costs and interest in an amount equal to seven percent (7%) per annum from the date of default.

11(b)(2). Demand the Developer to complete performance of the Work.

11(b)(3). Demand the Developer's surety (if any) to complete performance of the Work.

- 12. ACCEPTANCE OF WORK.** Prior to acceptance of the Work by the City Engineer, the Developer shall be solely responsible for maintaining the quality of the Work and maintaining safety at the Project site. Neither the final certificate of payment, nor any provision in this Agreement, nor partial or entire use or occupancy of the improvements by the City shall constitute an acceptance of the Work not done in accordance with this Agreement or relieve Developer of liability pursuant to Section 13, below. The Developer's obligation to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, the City Engineer has accepted the Work as complete, and the City Council has authorized the release of the security for faithful performance as described in Government Code Section 66499.7.
- 13. WARRANTY PERIOD.** The Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one year after acceptance of the Work by the City. In the event that (during the one-year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of the Developer under this Agreement, the Developer shall be in default.
- 14. RELATIONSHIP BETWEEN THE PARTIES.** Developer is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, contractors, or subcontractors, including any negligent acts or omissions. Developer is not City's agent and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
- 15. CONFLICTS OF INTEREST PROHIBITED.** Developer (including its employees, agents, contractors, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Developer maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Developer's conflicting interest may be terminated by the City.
- 16. NONDISCRIMINATION.** Developer shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Developer shall not discriminate against any employee or applicant because of race, color, ancestry, ethnicity, religious creed, national origin, physical disability, mental disability, medical condition, marital or family status, sexual orientation, gender or gender identification, age (over 40), veteran status, or sex.
- 17. NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt (or refusal) by a party, or (b) actual receipt (or refusal) at the address designated below, or (c) three (3) working days following deposit in the United

States Mail of registered or certified mail sent to the address designated below. Either party may modify their respective contact information identified in this section by providing notice to the other party.

TO: City

Attn: City Clerk's office
Angel Rodriguez
1 N. San Antonio Road
Los Altos, Ca 94022

To: Developer

Attn: LYELL, LLC
840 Moreno Ave.
Palo Alto, CA 94303

18. **HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
19. **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
20. **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara.
21. **ATTORNEYS' FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
22. **ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
23. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
24. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
25. **CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.
26. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Work described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

27. **COVENANT RUNNING WITH THE LAND.** This Agreement is entered into as a condition of the Tentative Map, is an instrument affecting the title or possession of the real property, and is intended to run with the land. All the terms, covenants and conditions herein imposed shall be binding upon and inure to the benefit of City, Developer, the successors in interest of Developer, their respective successors and permitted assigns, and all subsequent owners of a fee interest in the Property or of a beneficial interest substantially equivalent to a fee interest. The obligations of the Developer under this Agreement shall be the joint and several obligations of each and all of the parties comprising Developer, if Developer consists of more than one individual and/or entity. Upon the sale or division of the Property, the terms of this Agreement shall apply separately to each parcel and the fee owners of each parcel shall succeed to the obligations imposed on Developer by this Agreement.
28. **MISCELLANEOUS.** This Agreement may be executed in counterparts, each of which shall be deemed an original. There are no third-party intended beneficiaries of this Agreement. This Agreement represents the contributions of both parties, each of whom has had the opportunity to be represented by competent counsel, and the rule stated in Civil Code Section 1654 that ambiguities in a contract be construed against the drafter shall have no application hereto.
29. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the City and Developer do hereby agree to the full performance of the terms set forth herein.

CITY OF LOS ALTOS

**DEVELOPER
LYELL, LLC**

By: _____
 Title: Gabe Engeland
 City Manager
 Date: _____

By: _____
 Title: Jiaying Hou
 Managing member
 Date: _____

APPROVED AS TO FORM:

By: _____
 Title: Jolie Houston
 City Attorney

EXHIBIT A

GRANT DEED OF PROPERTY

****This document was electronically submitted to Santa Clara County for recording****

24859463

Regina Alcomendras
Santa Clara County - Clerk-Recorder
03/04/2021 01:31 PM

Titles: 1 Pages: 3

Fees: \$21.00

Tax: \$3520.00

Total: \$3541.00

RECORDING REQUESTED BY:
Orange Coast Title Company of Northern California

When Recorded Mail Document To:
Lyell, LLC
840 Moreno Ave.
Palo Alto, CA 94303

Escrow No.: 520-SCC-20105181-81 - ST
Title No.: 520-2140914-60

APN: 170-39-043

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s) that the DOCUMENTARY TRANSFER TAX is: **\$3,520.00**

- This transfer is exempt from the documentary transfer tax.
- The documentary transfer tax is computed on:**
 - computed on full value of property conveyed, or
 - computed on full value less value of liens or encumbrances remaining at time of sale,
 - OR transfer is EXEMPT from tax for the following reason:

Orange Coast Title Company

Signature of declarant or agent determining tax

Firm Name

- The property is located in the City of Los Altos

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Rodger C. Witham, Successor Trustee of the Anna E. Witham 1992 Trust, dated November 30, 1992

hereby GRANT(S) to

Lyell, LLC, a California Limited Liability Company

the following described real property in the County of Santa Clara, State of California:

See Exhibit A attached hereto and made a part hereof.

Commonly known as: 140 Lyell Street, Los Altos, CA 94022

Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax.

MAIL TAX STATEMENTS AS DIRECTED ABOVE

APN: 170-39-043
Dated: March 1, 2021

Rodger C. Witham, Successor Trustee of the Anna E. Witham 1992 Trust, dated November 30, 1992

BY: Rodger C. Witham
Rodger C. Witham
Successor Trustee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On March 02, 2021 before me, B. Solyman, Notary Public,

personally appeared Rodger C. Witham
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature B. Solyman (Seal)



MAIL TAX STATEMENTS AS DIRECTED ABOVE

Exhibit "A"

Beginning at the point of intersection of the Southerly line of Lyell Street with the Westerly line of Gabilan Street, as shown upon the Map hereinafter referred to: thence from said point of beginning, Southerly along said Westerly line of Gabilan Street 150.00 feet to the point of intersection thereof with the Southerly line of Lot 6 in Block 33 as shown upon said Map; thence leaving said line of Gabilan Street, Westerly along said Southerly line of Lot 6, 71.00 feet; thence Northerly parallel with said Westerly line of Gabilan Street, 150 feet to the said Southerly line of Lyell Street; thence Easterly along said line, 71.00 feet to the point of beginning.

Being the Easterly ½ of Lots 2, 4 and 5 in Block 33 as shown upon the Map entitled, "Map No. 3, Town of Los Altos," which Map was filed in the Office of the Recorder of the County of Santa Clara, State of California, November 4, 1907 in Book "M" of Maps at Page 1, in the City of Los Altos, County of Santa Clara, State of California.

Assessor's Parcel Numbers(s): 170-39-043

EXHIBIT B

CONDITIONS OF APPROVAL

EXHIBIT B-CONDITIONS

GENERAL

1. **Approved Plans**

Project approval is based upon the plans received on February 8, 2021 except as modified by these conditions. Subject to the following modifications

1a-Per the Complete Streets Commission an additional bicycle rack will be added to the project.

1b-The project maximum height as approved by the City Council at the February 23, 2021 meeting shall be twenty-six (26) feet six (6) inches per the plans dated February 8, 2021.

2. **Privacy Impacts**

The applicant shall be required to install a six-foot fence with a two-foot lattice along the westerly property boundary. Glazing of all second story windows will be required along the Westerly property boundary and the planting of fast-growing landscaping like Pittosporum and Carolina Evergreen Hedges must be installed prior to occupancy of the structure.

3. **Encroachment Permit**

The applicant shall obtain an encroachment permit and/or excavation permit prior to any work done within the public right-of-way and it shall be in accordance with plans to be approved by the City Engineer.

4. **Public Utilities**

The applicant shall contact electric, gas, communications, and water utility companies regarding the installation of new utility services to the site.

5. **Americans with Disabilities Act**

All improvements shall comply with Americans with Disabilities Act (ADA).

6. **Urban Runoff Pollution Prevention**

The project shall comply with the New Development and Construction Best Management Practices and Urban Runoff Pollution Prevention program, as adopted by the City for the purposes of preventing stormwater pollution (i.e. downspouts directed to landscaped areas, minimize directly connected impervious areas, etc.) The improvement plans shall include the "Blueprint for a Clean Bay" plan sheet in all plan submittals.

7. **Sewer Connection**

Any proposed sewer lateral connection shall be approved by the City Engineer.

8. **Second Story Lighting**

All exterior lighting above the ground floor shall be shrouded and/or downward facing.

9. **Indemnity and Hold Harmless**

Applicants must sign this application agreeing to hold harmless the City for any actions related to the permit. This form must be submitted at the time of submittal of the project to the City: The applicant/owner agrees to indemnify, defend, protect, and hold the City harmless from all costs and

expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceedings brought in any State or Federal Court, challenging any of the City's action with respect to the applicant's project. The City may withhold final maps and/or permits, including temporary or final occupancy permits, for failure to pay all costs and expenses, including attorney's fees, incurred by the City in connection with the City's defense of its actions.

PRIOR TO FINAL MAP RECORDATION

10. Public Utility Easements

The applicant shall dedicate public utility easements as required by the utility companies to serve the site.

11. Fees

Prior to final map recordation, the applicant shall pay all applicable fees, including but not limited to sanitary sewer impact fees, parkland dedication in lieu fees, traffic impact fees and map check fee plus deposit as required by the City of Los Altos Municipal Code.

12. Subdivision Improvement Agreement

Prior to the issuance of building permits the applicant shall be required to record a Final Map and Subdivision Improvement Agreement (SIA).

13. Affordable Housing Agreement

Prior to the issuance of building permits the applicant shall execute and record an Affordable Housing Agreement, in a form approved and signed by the Community Development Director and the City Attorney, that offers one (1) below market rate unit, for a period of at least 55 years. The below market rate unit shall be at the low-income level shall be constructed concurrently with the market rate units, shall be provided at the location on the approved plans, and shall not be significantly distinguishable with regard to design, construction or materials.

PRIOR TO BUILDING PERMIT SUBMITTAL

14. Right-of-Way Construction

The applicant shall submit detailed plans for any construction activities affecting the public right-of-way, including but not limited to excavations, pedestrian protection, material storage, earth retention, and construction vehicle parking, to the City Engineer for review and approval. The applicant shall also submit on-site and off-site grading and drainage plans that include drain swales, drain inlets, rough pad elevations, building envelopes, and grading elevations for approval by the City.

15. Sewer Capacity

The applicant shall submit calculations showing that the City's existing six-inch diameter sewer line will not exceed two-thirds full due to the project's sewer loads. For any segment that is calculated to exceed two-thirds full for average daily flow or for any segment that the flow is surcharged in the main due to peak flow, the applicant shall replace the six-inch sewer line with an eight-inch sewer line.

16. Trash Enclosure

The applicant shall contact Mission Trail Waste Systems and submit a solid waste, recyclables (and organics, if applicable) disposal plan indicating the type, size and number of containers proposed, and the frequency of pick-up service subject to the approval of the Engineering Division. The applicant shall also submit evidence that Mission Trail Waste Systems has reviewed and approved the size and location of the proposed trash enclosure. The enclosure shall be roofed to prevent rainwater from mixing with the enclosure's contents and shall be drained into the city's sanitary sewer system. The enclosure's pad shall be designed to not drain outward, and the grade surrounding the enclosure designed to not drain into the enclosure.

17. Stormwater Management Plan

The applicant shall comply with the Stormwater Pollution Prevention Measures per Chapter 10.16 of the Los Altos Municipal Code.

18. Green Building Standards

The applicant shall provide verification that the project will comply with the City's Green Building Standards (Section 12.26 of the Municipal Code) from a qualified green building professional.

19. Property Address

The applicant shall provide an address signage plan as required by the Building Official.

20. Truck Routing

A truck routing and staging plan for the proposed excavation of the site shall be submitted for review and approval by the City Engineer.

21. Construction Management Plan

The applicant shall submit a construction management plan for review and approval by the Community Development Director. The construction management plans shall address any construction activities affecting the public right-of-way, including but not limited to: prohibiting dirt hauling during peak traffic hours, excavation, traffic control, truck routing, pedestrian protection, appropriately designed fencing to limit project impacts and maintain traffic visibility as much as practical, material storage, earth retention and construction and employee vehicle parking. The applicant shall be required to have a pre-construction meeting with all abutting property owners to discuss the project schedule and to prominently display a sign with the single point of contact the community should interface with for any construction related impacts from the project. The "construction potty" and the "lumber storage" area shall be moved away from the existing condos along Lyell.

PRIOR TO FINAL OCCUPANCY

22. Underground Utilities

The applicant shall be responsible for the removal/undergrounding of all existing overhead utilities.

23. Sidewalk Replacement

The applicant shall remove and replace all broken, cracked, or damaged sidewalks (and/or curb and gutters) adjacent to the site as directed by the City Engineer.

24. Stormwater Catch Basin

The applicant shall label all new or existing public and private catch basin inlets which are on or directly adjacent to the site with the "NO DUMPING - FLOWS TO ADOBE CREEK" logo as required by the City.

25. Alley Improvement

The applicant shall improve the entire width of the alleyway with the treatment approved by the City Engineer.

26. Off-Site Improvements

The applicant shall obtain design approval and construction City standard sidewalk, vertical curb and gutter and City standard parking duck-out along the Tyndall Street frontage.

27. Green Building Verification

The applicant shall submit verification that the structure was built in compliance with the California Green Building Standards pursuant to Section 12.26 of the Municipal Code.

EXHIBIT C

LABOR CODE PROVISIONS

1. This Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
2. The Work is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
3. Developer shall not enter into a contract with a contractor for the performance of the Work unless the contractor and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

EXHIBIT D

INSURANCE REQUIREMENTS

Developer's performance of Work under this agreement shall not commence until Developer shall have obtained all insurance required under this Exhibit and such insurance shall have been reviewed and approved by the Risk Manager. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Developer shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for alleged injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Developer, the Contractor it's agents, representatives, employees and contractors.

INSURANCE COVERAGE AND LIMITS RESTRICTIONS

1. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
 - a. Blanket contractual liability
 - b. Broad form property coverage
 - c. Personal injury
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Such other insurance coverages and limits as may be required by the City.

B. MINIMUM LIMITS OF INSURANCE

Developer shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and a \$2,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability:
 - Bodily Injury by Accident - \$1,000,000 each accident.
 - Bodily Injury by Disease - \$1,000,000 policy limit.
 - Bodily Injury by Disease - \$1,000,000 each employee.

4. Such other insurance coverages and limits as may be required by the City of.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

1. Any deductibles or self-insured retentions must be declared to and approved by the City of. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of ****CITY****, its officers, officials, employees, and volunteers; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
2. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.
3. The City reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

D. ADDITIONAL INSURED REQUIREMENTS:

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

- a. The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects alleged: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer; premises owned, occupied or used by the Developer; or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
- b. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
- c. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
- d. Developer shall furnish properly executed Certificates of Insurance from insurance companies acceptable to the City and signed copies of the specified endorsements for each policy prior to commencement of work under this agreement. Such documentation shall clearly evidence all coverages required above including specific evidence of separate endorsements naming the City and shall provide that such insurance shall not be materially changed, terminated or allowed to expire except after 30 days prior written notice by certified mail, return receipt requested, has been filed with the City Clerk.
Such insurance shall be maintained from the time work first commences until completion of the work under this agreement. Developer shall replace such certificates for policies expiring prior to completion of work under this agreement.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. COMPLETED OPERATIONS

Developer shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event the Developer fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by the Developer.

G. CROSS-LIABILITY

The Liability policy shall include a cross-liability or severability of interest endorsement.

H. FAILURE TO MAINTAIN INSURANCE COVERAGE

If Developer, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The City, at its sole option, may terminate this agreement and obtain damages from the Developer resulting from said breach. Alternatively, the City may purchase such required insurance coverage, and Developer shall reimburse the City for any premium costs advanced by the City for such insurance.

I. PRIMARY AND NON-CONTRIBUTORY

For any claims related to this project, the Developer’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Developer’s insurance and shall not contribute with it.

The additional insured coverage under the Developer’s policy shall be primary and non-contributory” and will not seek contribution from the City’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

J. SUBCONTRACTORS

Developer shall require its contractors to maintain the same levels of insurance and provide the same indemnity that the Developer is required to provide under this Agreement. A contractor is anyone who is under contract with the Developer or any of its contractors to perform work contemplated by this Agreement. The Developer shall require all contractors to provide evidence of valid insurance and the required endorsements prior to the commencement of any work.

K. SUBROGATION WAIVER

Developer agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all Contractors, subcontractors or others involved in any way with the services to do likewise.

L. VERIFICATION OF COVERAGE

Developer shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before the services commence.